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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,700	10/14/2003	William Hubbs	29488/39575	3412

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EXAMINER

GEHMAN, BRYON P

ART UNIT PAPER NUMBER

3728

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/684,700

Applicant(s)

HUBBS ET AL.

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-11,13-17 and 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-11,13-17 and 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 depends from canceled claim 12.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6, 8-10, 13-14, 17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naughton et al. (5,950,911) in view of Keppler (1,909,473). Naughton et al. disclose a product display and support carton comprising a display box (4) defined by a bottom panel (6) and an upwardly extending wall panel (8, 8, 10 and 10) forming a product carrying enclosure, the upwardly extending wall panel being defined by a front wall (10), a rear wall (10) and a pair of generally parallel side walls (8, 8), the display box having an open top, and separate inserts (12) integrally associated with each of the side walls to form and support one of a pair of opposed dividers (20) extending partially inwardly into the product carrying enclosure to define at least two separate product receiving compartments and an unobstructed center viewing area, the dividers being parallel to the front and rear walls. Keppler discloses a display and

support carton inclined at an angle to the vertical when its bottom panel is on a horizontal surface (see Figures 3 and 5). To modify Naughton et al. employing the inclining teaching of Keppler would have been obvious in order to dispose the contents at an inclined angle to facilitate viewing the contents, as suggested by Keppler.

As to claim 2, Keppler suggests rearwardly inclining the front and rear walls.

As to claims 3, 9 and 17, Naughton et al. disclose the front wall as a product restraining rail less in height than the intended contents.

As to claims 4, 10 and 17, Keppler discloses providing the rear wall as a product support panel at least the height of products to be displayed.

As to claim 6, the modification of Naughton et al. by Keppler would provide this relationship.

As to claims 13 and 19, Naughton et al. disclose plural inserts (12) on each side wall.

As to claims 14 and 20, Naughton et al. disclose U-shaped inserts.

5. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 8 above, and further in view of Barr et al. (2,260,428). Barr et al. disclose the top wall edge of inclining side walls inclining upwardly and rearwardly from the front wall to the back wall. To modify the side walls of the previous combination employing the inclining top wall edge teaching of Barr et al. would have been obvious in order to better support the sides of contents in the rear of the carton, as

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the rearward contents will require more support due to the frontward contents inclining thereon.

6. Claims 15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 8 and 17 above, and further in view of O'Neill (5,505,371). O'Neill discloses an L-shape defined by a leg against the side wall and another leg perpendicular to the side wall. To modify the inserts of the previous combination to comprise L-shaped inserts as taught by O'Neill would have been an obvious substitution of equivalent shapes of inserts previously recognized in the display carton divider field.

7. Claims 16 and 22 are under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 13 and 19 above, and further in view of Edgerton Jr. et al. (5,372,299). Edgerton et al. disclose employing tape (column 3, line 63 through column 4, line 7) to secure the dividers. To modify the prior art combination further employing tape as a securing means for the dividers would have been obvious in view of Edgerton Jr. et al. to better secure dividers within a display box. For the tape to be double sided would have been obvious in order to secure opposing surfaces to one another, as double-sided tape is conventionally employed.

8. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 17 above, and further in view of Ockey (3,955,671). O'Neill

discloses corrugated material (column 2, lines 41-48) to comprise a display carton.

Ockey discloses printed indicia (Figures 2, 3 and 8) contained on the carton. To modify the teaching of O'Neill employing printed indicia would have been obvious in order to provide information about the contents.

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection incorporating Naughton et al..

10. This action is made non-final in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic
Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bryon P. Gehman
Primary Examiner
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BPG